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Attorneys for Defendant
INTEGRITY INVESTMENT GROUP, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEVIN R. MCLEAN,

Plaintiff,

v.

WORLD SAVINGS FSB; INTEGRITY
INVESTMENT GROUP, LLC; GOLDEN
WEST SAVINGS ASSOCIATION
SERVICE CO.; SUSAN FEDERIGHI; BILL
FORD; JEFFREY FORD; CALIFORNIA
FRANCHISE TAX BOARD; WILLIAM L.
VEEN,

Defendants.____

No. 07-05594 JSW

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF MOTION TO
EXPUNGE NOTICE OF PENDING
ACTION**

Date: March 7, 2008

Time: 9:00 a.m.

**Courtroom: Hon. Jeffrey S. White,
Courtroom 2, 17th Floor**

1. Introduction and Summary of Arguments

Plaintiff filed this action originally on November 2, 2007. The operative pleading is the First Amended Complaint, filed December 7, 2007, and served in January 2008 on this defendant. The First Amended Complaint states four claims for relief: To Set Aside a Non Judicial Sale; Declaratory Relief; to Quiet Title and for Wrongful Eviction. The moving defendant is a third party purchaser at a foreclosure sale held in October 2007, in which

1 defendant purchased plaintiffs former property, a single family dwelling in Woodside,
 2 California. As to this defendant, the First Amended Complaint claims that the sale should be set
 3 aside due to the “ fraud” of the original lender, World Savings, and the foreclosure trustee,
 4 Golden West Savings Association Service Company. The First Amended Complaint seeks a
 5 declaration that Integrity Investment Group has no interest in the real property and to quiet title
 6 against its interest. It also seeks to restrain pending eviction proceedings in San Mateo Superior
 7 Court, under state law pursuant to California Code of Civil Procedure §1161a.

8 After filing this action, plaintiff recorded a Notice of Pending Action against the disputed
 9 real property pursuant to California law, in support of his state law claims herein.

10 In response to the service of the First Amended Complaint, this Defendant has filed a
 11 motion to dismiss, on, among other things, the grounds that under FRCP Rule 12(b)(1), the court
 12 is without subject matter jurisdiction to hear and determine the claims against this defendant
 13 because there is no federal question or other federal subject matter jurisdiction over the alleged
 14 state law non-judicial foreclosure or eviction action. All other defendants have moved for relief
 15 on the same ground. All motions are to be heard on the date noticed for this motion. Since the
 16 plaintiff cannot establish the jurisdictional facts necessary to remain before this court, the Notice
 17 of Pending Action should be expunged at the same time the case is dismissed.

18 **2. Procedural History and Facts**

19 Defendant originally filed an eviction action on October 19, 2007 in the San Mateo
 20 Superior Court for unlawful detainer under California Code of Civil Procedure § 1161a, to recover
 21 possession of a single family dwelling and land commonly known as 481 West Maple Way,
 22 Woodside, California 94062. (First Amended Complaint [hereafter “FAC”], ¶¶ 32-36 and Exh. E,
 23 F). As the First Amended Complaint alleges, there was a foreclosure sale of the defendant’s
 24 property on October 3, 2007, at which plaintiff, a third party bidder, was the successful purchaser.
 25 Defendant is a hold over owner who is refusing to give up possession. (FAC, ¶¶ 3, 12-18; 33-36
 26 and Exh. B, E and F).

27 The First Amended Complaint alleges unspecified irregularities in the sale (FAC, ¶¶ 4, 17-
 28

18; 21; 35) which plaintiff contends violated his “due process” rights, such that it presents an action “under 42 U.S.C. § 1983.” (FAC, ¶ 10). Plaintiff contends that “selling Plaintiff’s property without notice is a violation of the Due Process afforded Plaintiff under the Fourteenth Amendment of the United States Constitution...” (FAC ¶ 10; see also FAC ¶ 35).

3. Expungement of Notice.

In this case, in connection with his state law claims (which are in reality all of the claims), plaintiff availed himself of California Code of Civil Procedure §§ 405.1-405.4, and recorded a notice of the pendency of this action on November 5, 2007, as Instrument No. 2007-158458 in the Office of the San Mateo County Recorder against defendant’s real property commonly known as 481 West Maple Way, Woodside, California 94062. (Declaration of Mark J. Romeo in Support of Motion, [hereafter “Romeo”], ¶¶ 1-2 and Exhibit 1). The notice has never been served on defendant. (Id., ¶ 2).

This defendant and all other defendants have moved to dismiss this case, which motions are set for hearing on March 7, 2008. The motions all collectively challenging the basis for federal question jurisdiction against defendants. Those motions make it clear that this action should not be “pending” at all.

Under California Code of Civil Procedure §405.31, the court may order a notice expunged where it finds that the plaintiff has not established the probable validity of the real property claim in the action. Under this statute, defendant submits that the court should order expungement of the notice of pending action. First, plaintiff has the burden of establishing his jurisdictional facts in order to remain before the court. The motions to dismiss demonstrate that his claims for relief in this court will not survive the pleading stage. Therefore, there is no “probable validity” to such claims. Second, under California Code of Civil Procedure § 405.23, a Notice of Pending action is “void” if not served on a party. In this case, the notice was not served on Integrity Investments, which only learn of it through the title report presented to the court. (Romeo, ¶ 2).

Under these circumstances, plaintiff cannot establish that this action is probably valid. Therefore, the motion should be granted, expunging the Notice of Pending Action.

1 In addition, the court can award attorneys fees to the prevailing party on a motion to
2 expunge a notice of pending action. (Cal. Code Civil Proc. §s 405.38). In this case, the fact that
3 there is no basis for this action to be pending before the court, indicates that the recording is ans
4 was intended to cloud the title of defendant's property and create delay. Therefore, the court should
5 ward defendant the reasonable costs of this motion, or \$900.00. (Romeo¶ 3).

6 **4. Conclusion.**

7 For the foregoing reasons, the court should grant the motion, and expunge the Notice of
8 Pending Action concurrently with the dismissal of the case. The court should award defendant
9 the fees incurred to file this motion.

10 Dated: January 24, 2008

LAW OFFICES OF MARK J. ROMEO

11 By /s/Mark J. Romeo

12 MARK J. ROMEO

13 Attorneys for Plaintiff
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PROOF OF SERVICE

I am employed in the City and County of San Francisco, California. I am over the age of 18 years and not a party to the within action; my business address is 130 Sutter Street, 7th Floor, San Francisco, CA 94104.

On January 24, 2008, I served the foregoing document(s) on the interested party(ies) in this action by placing a true copy XX the original of said document(s) in a sealed envelope(s) addressed as stated below and

BY MAIL

 I deposited such envelope(s) in the mail at San Francisco,

 I am "readily familiar" with the office's practice of collection and processing correspondence for mailing. Under that practice, the mail would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY PERSONAL SERVICE

 Personally hand delivered said document(s) to addressee

 I caused said document(s) to be served via personal service

BY OVERNIGHT MESSENGER

 I caused said document(s) to be served by for next-day delivery, by agreement with tenants

BY FACSIMILE

 And I faxed such document(s) to telephone number. A transaction report confirming a successful transmission was obtained.

BY certified or registered mail

 I deposited such envelope(s) in the mail at San Francisco, California with the U.S. postal service on that same day with postage thereon fully prepaid, certified mail, return receipt requested.

PARTY(IES) SERVED:**Plaintiff**

KEVIN R. MCLEAN

LAW OFFICES OF BELLI & MCLEAN

473 Jackson Street, Second Floor

San Francisco, CA 94111

Defendants World Savings, Golden West Savings Association Service Company

JACK R. NELSON

R. EUNA KIM

REED SMITH LLP

POB 7936

San Francisco, CA 94120-7936

Defendants Bill Ford, Jeffrey Ford, Susan Federighi

BILL FORD

1455 Sierra Drive

Pacifica, CA 94044

DOCUMENT(S) SERVED:**Not of Motion and Motion****Memo P&A****Proposed Order****Decl of Romeo**

 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 24, 2008 at San Francisco, California.

Mark J. Romeo

Type or Print Name

/s/ Mark J. Romeo

Signature